THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.14131 OF 2006

13.07.2006

Between:

Seetampeta Large Sized Cooperative Society Ltd., Seetampeta,
Represented by its Secretary, U.Satyanarayana, S/o.Krishna

… Petitioner

AND

The District Collector, West Godavari District
And others

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.14131 OF 2006

ORDER:

Seetampeta Large Sized Cooperative Society Ltd., Seetampeta (hereafter called, the petitione society) filed the instant writ petition seeking a writ of Mandamus directing the respondents 1 to 4 not to pay any compensation to respondents 5 to 32 in respect of lands of those respondents, which are acquired for public purpose.

Respondents 5 to 32 allegedly availed short term and long term agricultural loans from the petitioner society duly mortgaging the lands owned by them situated at Perggudem and Challachanthalapudi villages of Denduluru Mandal in West Godavari District to the petitioner society. These lands of the respondents 5 to 32 were acquired by respondents 1 to 4 for Indira Sagar (Polavaram) Project Right Main Canal Unit-II. According to the petitioner society, after due process of law, award enquiry has not been conducted, as the land of the respondents was acquired by negotiations. The petitioner society approached respondents 1 to 4 and requested to pay the compensation payable to respondents 5 to 32 to the petitioner society towards discharge of the crop loans, in vain. The petitioner contends that the total amount due from respondents 5 to 32 is about Rs.9,00,000/- (Rupees Nine lakhs only) and if the amount is paid to respondents 5 to 32 ignoring the claims of the petitioner society, without insisting a No due certificate from them, it would cause loss and hardship to the petitioner society. Therefore, the present writ petition is filed.

After hearing the learned Counsel for the petitioner and learned Assistant Government Pleader for respondents 1 to 4, the question that would arise is whether as mortgagee of the agricultural lands of the respondents 5 to 32, which were mortgaged to the petitioner society, the petitioner is entitled to claim compensation under the Land Acquisition Act, 1894. This aspect of the matter is governed by Section 73(2) of Transfer of Property Act, 1873, which reads as under.

73. Right to proceeds of revenue sale or compensation on acquisition:-

> (2) Where the mortgaged-property or any part thereof or any interest therein is acquired under the Land Acquisition Act, 1894 (1 of 1894), or any other enactment for the time being in force, providing for the compulsory acquisition of immovable property the mortgagee shall be entitled to claim payment of the mortgage money, in whole or in part, out of the amount due to the mortgagor as compensation.

In an unreported judgment of this Court in **Thamshi Primary Agricultural Cooperative Society v LAO/RDO, Adilabad District**[1], I have considered this aspect of the matter. In that case, by the time Primary Agricultural Cooperative Society filed writ petition before this Court for almost similar relief, award enquiry was pending and, therefore, this Court made the following order.

> Similar Writ Petitions being W.P.No.25531 and 25532 of 2002 filed by cooperative societies were disposed of by this Court on 26.8.2004, observing as under.
>
> > Therefore, this Court holds that the writ petitions are filed on a mere apprehension by the PACSs and Adilabad DCCB without first approaching the first respondent. If the PACSs hold valid mortgage as on the date of issue of notification under Section 4(1) of the Act, it shall be open to the respective primary societies to approach the Land Acquisition Officer, Nirmal claiming their rights. If the amounts claimed by the petitioner societies are disputed by the landowners, the matter may be referred to the Civil Court for orders under Section 30 of the Act. In these writ petitions no relief, as prayed, can be granted.

In this case, the petitioner alleges that award enquiry was not conducted, as the compensation was fixed by the respondents 1 to 4 with respondents 5 to 32 under A.P.Land Acquisition (State Level Negotiation Committee) Rules, 1998. Though the petitioner allegedly approached the respondents 1 to 4, its case was not considered. The submission that award enquiry was not conducted when the land is acquired as per the negotiations cannot be accepted. Even where the officials resorted to move on negotiations for acquiring the land, there has to be a formal award. Therefore, the Land Acquisition Officer, second respondent herein, has to consider the application of the petitioner in the matter of payment of compensation to respondents 5 to 32 without insisting upon No due certificate from the petitioner. Liberty is also given to the petitioner to make a detailed representation enclosing a copy of this order.

The writ petition, with the above observations, is accordingly disposed of. No costs.

_____

(**V.V.S.RAO, J**)

July 13, 2006

NOTE:

Issue order copy by

17.7.2006.

(By order)

YS

---

[1] W.P.No.21058 of 2005, dated 28.9.2005